

REMARKS

Claims 1-5, 9-12 and 17 are pending in the application. Claims 1 and 17 are in independent form. The Examiner has indicated that dependent claims 10-12 contain allowable subject matter. On the other hand, the Examiner has rejected the remaining claims on reference grounds.

Specifically, claims 1 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mick (U.S. Patent No. 5,355,893) in view of Phillips (U.S. Patent No. 6,726,637). Claims 2 and 4-5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mick in view of Phillips and further in view of Cannon (U.S. Patent Publication No. 2004/0003816). Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mick in view of Phillips and Cannon and further in view of Yang (U.S. Patent No. 6,739,218). Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mick in view of Phillips and further in view of Starr (U.S. Patent No. 6,849,049).

Applicants have amended independent claims 1 and 17 to clarify that the airway case is positioned between the mouth guide and the nose of a living body. It is submitted that the claims patentably distinguish over the prior art.

In the rejection, the Examiner contends that the nasal-oral ventilation adapter 41 of Mick corresponds to the claimed airway case and that the mouth piece 57/58 corresponds to the claimed mouth guide. The Examiner asserts that Mick discloses “an airway case adapted to be disposed below the nostrils of a living body (element 41) and formed with an airway passage

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extending across an optical axis of a light beam emitted from the sensors light emitter....”

Applicants respectfully disagree with the Examiner.

Specifically, the nasal-oral ventilation adapter 41 disclosed in Mick is not formed with an airway passage which extends “across an optical axis of a light beam emitted from the light emitter of the sensor”, as recited in independent claims 1 and 17. While the adapter 41 includes an airway passage, that passage does not intersect or does not extend across the optical axis of the light beam, as the Examiner asserts. To the contrary, with reference to Figure 7 of Mick, the optical axis of the light beam associated with the light emitter of the sensor is actually provided in the separate element, mainly the housing 19 to which the adapter 41 is connected, as shown in Figure 8. Accordingly, Mick does not teach or suggest an airway adapter that includes an airway case which is disposed below the nostrils of a living body and formed with an airway passage 13 extending across an optical axis of a light beam emitted from the light emitter of a sensor, as claims 1 and 17 require. By asserting that element 41 corresponds to the airway case, and acknowledging that the optical axis of a light beam is disposed in separate member 19, the Examiner should recognize that Mick does not teach or suggest this aspect of claims 1 and 17.

Claims 1 and 17 recite the airway case is positioned between the nostrils and the mouth of a living body. This is in contrast to that disclosed in Mick in which the member 41 (which the Examiner analogizes to the airway case.) is disposed on the outside of the mouth piece. Further, to the extent that the Examiner intends to rely on element 19 as corresponding to a portion of the claimed airway case, this member 19 is adapted to be connected to the bottom portion of the


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adapter 41 so that it is located below the mouth, not between the mouth and the nostrils of the living body.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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Date: March 1, 2007